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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/708,994	04/06/2004	Richard C. Jaworski		2993

35647   7590   08/29/2007
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EXAMINER
BELL, LOUIS W

ART UNIT	PAPER NUMBER
2609	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/708,994	JAWORSKI, RICHARD C.
	Examiner	Art Unit	
	Louis Bell	2609	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>06 April 2004</u>.

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-8</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>1-8</u> is/are rejected.

7) ☒ Claim(s) <u>5-8</u> is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on <u>04/06/2007</u> is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

1. This is a Non-Final Office Action in response to the present US Application filed on 04/06/2004. **Claims 1-8** are presented for examination. No claims are withdrawn. No claims are pending.

Claim Objections

2.   **Claim 1** is objected to because of the following informalities: it ends with a semicolon (";"), it needs to end with a period ("."). Appropriate correction is required.

Claims 5, 6, 7 and 8 are objected to because of the following informalities: improper multi-dependent claims. Appropriate correction is required.

Claim Rejections - 35 USC § 103

3.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4.   **Claim 1, 2, 3, 4, 6, 7 and 8** are rejected under 35 U.S.C. 103(a) as being unpatentable over Pub. No.: US 2005/0286486 to Miller, "Miller", in view of U.S. Patent No. 5,822,302 to Scheetz et al., "Scheetz" and U.S. Patent No. 5,748,884 to Royce et al., "Royce".

As to **claim 1** Miller discloses a system for monitoring the performance of the cable modem upstream and downstream channels on a cable network, the system comprising (*a network is shown in Fig.1 that monitors the performance of the cable modem upstream and downstream channels, page 3 paragraph 0041 and page 5 paragraph 0065*);

Miller further discloses a cable modem or cable modem status monitoring transponder (*an analysis devise is used to measure the network performance, fig. 1 device 100, page 4 paragraphs 0045-0051*);

Miller further discloses a cable network equipped with a cable modem termination system (CMTS) that is connected to the Internet or private network;*(fig. 1, devices 134 is a CMTS, network 150 is the internet, network 138 is server network (see also paragraph 0029 on page 2) device 130 is a cable modem);*

Miller does not expressly disclose a central computer or computers for remotely monitoring performance;

Scheetz discloses a computer that monitors a network (*col. 5 lines 45 to 53 and col. 6 lines 1-3, by reference patent application no. 08/663401 which is now patent no.: US 5748884 column 2 lines 1-10, claim 12*);

Miller and Scheetz are analogous art because they are from the same field of endeavor with respect to network monitoring;

At the time of the invention, it would have been obvious to a person of ordinary skilled in the art to combine the teachings of Miller and Scheetz with motivations such

as to fully automate the detection, analysis and notification of unavailable routes with no human intervention (Scheetz col. 6 line 9-11).

As to **claim 2** Miller and Scheetz disclose the cable modem or cable modem status monitoring transponder;

Miller does not expressly disclose cable modem or cable modem status monitoring transponder equipped with software to continuously monitor and test the upstream and downstream channels for lost packets by using a string of ping packets destined for the CMTS or other router;

Scheetz discloses a remote operation center with periodically pings a console at a data center (col. 1 lines 55-65);

Miller and Scheetz are analogous art because they are from the same field of endeavor with respect to network monitoring;

At the time of the invention, it would have been obvious to a person of ordinary skilled in the art to combine the teachings of Miller and Scheetz with motivations such as to notify someone in a remote location that there is at least a fault in the network.

As to **claim 3** Miller and Scheetz disclose the cable modem or cable modem status monitoring transponder;

Miller does not expressly disclose a cable modem or cable modem status monitoring transponder in equipped with software to continuously monitor and testing;

Scheetz discloses a remote operation center with periodically pings a console at a data center (*col. 1 lines 55-65*);

Miller further discloses monitoring and testing the upstream channel for lost

packets by using a string of ping packets destined for the CMTS or other router, and

means to isolate the lost packets to only the upstream path (*ping testing is used to test*

for packet loss in the downstream and upstream channel, page 9 paragraph 0100, page

14 paragraphs 0174-0183 and page 15 paragraphs 0196-0199);

Miller and Scheetz are analogous art because they are from the same field of

endeavor with respect to network monitoring;

At the time of the invention, it would have been obvious to a person of ordinary

skilled in the art to combine the teachings of Miller and Scheetz with motivations such

as to fully automate the detection, analysis and notification of unavailable routes with no

human intervention (Scheetz col. 6 line 9-11).

As to **claim 4** Miller and Scheetz disclose the cable modem or cable modem

status monitoring transponder;

Miller does not expressly disclose a cable modem or cable modem status

monitoring transponder in equipped with software to continuously monitor and testing;

Scheetz discloses a remote operation center with periodically pings a console at

a data center (*col. 1 lines 55-65*);

Miller further discloses monitoring and testing the downstream channel for

Modulation Error Ratio (MER), Signal to Noise Ratio (SNR), Bit Error Rate (BER) and/or

carrier level (page 7, paragraph 0084);

Miller and Scheetz are analogous art because they are from the same field of

endeavor with respect to network monitoring;

At the time of the invention, it would have been obvious to a person of ordinary skilled in the art to combine the teachings of Miller and Scheetz with motivations such as to fully automate the detection, analysis and notification of unavailable routes with no human intervention (Scheetz col. 6 line 9-11).

As to **claim 6** Miller and Scheetz disclose the cable modem or cable modem status monitoring transponder;

Miller does not expressly disclose a cable modem or cable modem status monitoring transponder equipped with software to transmit the results of upstream and/or downstream tests continuously to the central computer or computers in Claim 1 over the cable network equipped with a cable modem termination system connected to the internet or private network in Claim 1;

Scheetz discloses a computer that monitors a network and sends the results of ping tests to a remote computer (*col. 5 lines 45 to 53 and col. 6 lines 1-3; by reference patent application no. 08/663401 which is now patent no.: US 5748884 column 2 lines 1-10, claim 12*);

Miller and Scheetz are analogous art because they are from the same field of endeavor with respect to network monitoring;

At the time of the invention, it would have been obvious to a person of ordinary skilled in the art to combine the teachings of Miller and Scheetz with motivations such as to fully automate the detection, analysis and notification of unavailable routes with no human intervention (Scheetz col. 6 line 9-11).

As to **claim 7** Miller and Scheetz disclose the cable modem or cable modem status monitoring transponder;

Miller does not expressly disclose the central computer or computers that contain software to receive the upstream and downstream measurement results from the cable modem or cable modem status monitoring transponder in Claim 5;

Scheetz discloses a computer that receives test information of a ping test (*col. 5 lines 45 to 53 and col. 6 lines 1-3, by reference patent application no. 08/663401 which is now patent no.: US 5748884 column 2 lines 1-10, claim 12*);

Miller and Scheetz are analogous art because they are from the same field of endeavor with respect to network monitoring;

At the time of the invention, it would have been obvious to a person of ordinary skilled in the art to combine the teachings of Miller and Scheetz with motivations such as to fully automate the detection, analysis and notification of unavailable routes with no human intervention (Scheetz col. 6 line 9-11).

As to **claim 8** Miller and Scheetz disclose the cable modem or cable modem status monitoring transponder;

Miller does not expressly disclose the central computer or computers that contain software to receive the upstream and downstream measurement results from the cable modem or cable modem status monitoring transponder in Claim 5;

Scheetz discloses a computer that receives test information and alarm notification of a ping test (*col. 5 lines 45 to 53 and col. 6 lines 1-3, by reference patent*

application no. 08/663401 which is now patent no.: US 5748884 column 2 lines 1-10,

claim 12);

Miller and Scheetz are analogous art because they are from the same field of

endeavor with respect to network monitoring;

At the time of the invention, it would have been obvious to a person of ordinary

skilled in the art to combine the teachings of Miller and Scheetz with motivations such

as to fully automate the detection, analysis and notification of unavailable routes with no

human intervention (Scheetz col. 6 line 9-11).

6.   **Claim 5 is** rejected under 35 U.S.C. 103(a) as being unpatentable over U.S.

Pub. No.: US 2005/0286486 to Miller, "Miller", in view of U.S. Patent No. 5,822,302 to

Scheetz et al., "Scheetz" and U.S. Patent No. 5,748,884 to Royce et al., "Royce" as

applied to claim 1 above and further in view of Pub. No.: US 2005/0094567 A1 to

Kannan et al. "Kannan".

As to **claim 5** Miller and Scheetz disclose the cable modem or cable modem

status monitoring transponder;

Miller and Scheetz do not expressly disclose cable modem or cable modem

status monitoring transponder equipped with software to continuously compare the

results of upstream and/or downstream tests in claim 2, Claim 3 and Claim 4 to

predefined limits;

Kannan discloses a network management system that monitor and test

performance to any thresholds for generating alarm (page 3 paragraph 0034);

Scheetz discloses a computer that monitors a network and sends the results of ping tests to a remote computer (*col. 5 lines 45 to 53 and col. 6 lines 1-3, by reference patent application no. 08/663401 which is now patent no.: US 5748884 column 2 lines 1-10, claim 12*);

Miller, Scheetz and Kannan are analogous art because they are from the same field of endeavor with respect to network monitoring;

At the time of the invention, it would have been obvious to a person of ordinary skilled in the art to combine the teachings of Miller, Scheetz and Kannan with motivations such as to monitor services without requiring the deployment of a dedicated hardware and/or software to probe each customer location (Kannan page 1 paragraph 0007).

Conclusion

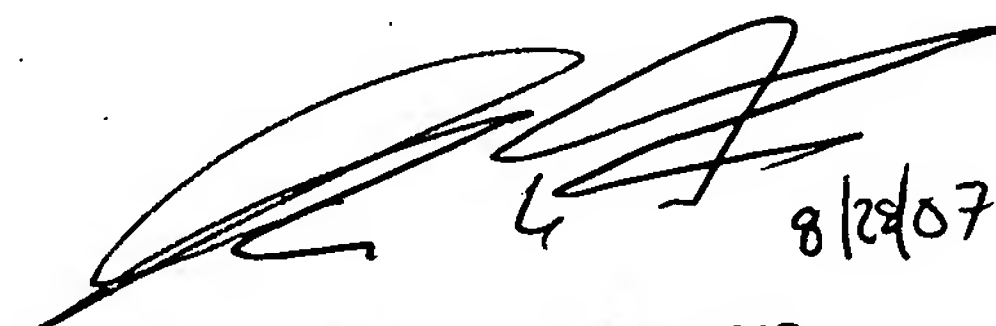Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis Bell whose telephone number is 571-270-3312. The examiner can normally be reached on Monday-Friday 7:30 a.m. to 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derrick Ferris can be reached on 571-272-3123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

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USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LB/

DERRICK W. FERRIS
SUPERVISORY PATENT EXAMINER